

§ 1415.55 Exemptions.

(a) The systems of records entitled "Personal Security Files" and "Subject File" contain some information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is properly classified pursuant to such Executive Order. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(1) of the Privacy Act, 5 U.S.C. 552a(k)(1), these systems of records are eligible for exemption from the requirements of the following subsections of the Privacy Act: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f). Disclosure of information properly classified pursuant to an Executive Order would jeopardize the national defense or foreign policy of the United States.

(b) The systems of records entitled "Agency Contacts," "Investigations," "Public Contacts," and "Subject File" consist, in part, of investigatory material compiled by the Review Board for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided however, that if any individual is denied any right, privilege or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are eligible for exemption from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of the agency's accounting of certain disclosures to an individual who is the subject of an investigation could

reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d) because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsections (d)(2), (3), and (4) because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the Review Board continuously to retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation.

(5) From subsection (e)(4)(G) and (H), because the Review Board is claiming an exemption for subsections (d) (Access to Records) and (f) (Agency Rules) of the Act, these subsections are inapplicable to the extent that these systems of records are exempted from subsections (d) and (f).

(6) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to the person dealing with an actual or potential investigation must be exempted because such notice to an individual would be detrimental to the successful conduct of a pending or future investigation. In addition, mere notice of an investigation could inform the subject or others that their activities either are, or may become, the subject of an

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investigation and might enable the subjects to avoid detection or to destroy assassination records. Since the Review Board is claiming an exemption for subsection (d) of the Act (Access to Records) the rules require pursuant to subsection (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(c) The systems of records entitled "Employment Applications" and "Personal Security Files" consist in part of investigatory material compiled by the Review Board for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a

source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of Exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are eligible for exemption from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

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